



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Abatement Action on the
Motion of the Department of Natural Resources to
Cease Use of a Former Boathouse on Taylor Lake
(Chain), Owned by Clear Water Harbor, Inc.;
Padraic and Ann Marie Meighan located in the
Town of Farmington, Waupaca County, Wisconsin

Case No. DNR-14-026

NOTICE OF INVESTIGATION
NOTICE OF PUBLIC HEARING
AND
NOTICE OF PREHEARING SCHEDULING CONFERENCE

The Department of Natural Resources ("WDNR or Department") Northeast Region staff conducted field investigations and allege the following:

1. On September 15, 2011, the Department received an application, form 3500-053 including the boathouse repair and maintenance certification attachments, from Pat and Ann Meighan d.b.a. Clearwater Harbor, Inc. (collectively "Applicant,") Waupaca County, Wisconsin ("Application.")
2. The Application requested authorization to repair and maintain structural elements of the Applicant's existing boathouse located at Clear Water Harbor, N2757 County Rd., QQ, Waupaca, WI ("Boathouse"), pursuant to Wis. Admin. Code §§ NR 325.06, 325.07, 325.09 and 325.10. The Application listed the following specific structural repairs:
 - 56 New wood foundational pilings,
 - 1400 sq. ft. new wood flooring material,
 - 8 new windows,
 - two new 10' X 8' overhead doors
3. DNR reviewed the application for certification pursuant Wis. Admin. Code §§ NR 325.07 and 325.10(1).
4. The boathouse extends into Taylor Lake (Chain) beyond the ordinary high watermark, and the lake is navigable in fact at the project site.

5. In compliance with Wis. Admin. Code § NR 325.0605, the Application included the Applicant's 2011 Town of Farmington assessment of valuation including the Boathouse as a building improvement with a total assessed value of \$29,600. The equalized assessed value equals the "current value" as defined in Wis. Admin. Code § NR 325.03(4).
6. Wisconsin Admin. Code §§ NR 325.06 and 325.07 require that the total costs of any maintenance and repair to a boathouse must be less than 50% of the current value.
7. On October 27, 2011, the Department granted certification under Wis. Stat. § 30.121 and Wis. Admin. Code Ch. NR 325, authorizing the \$10,692 in repairs proposed in the Application ("Certification and Agreement.")
 - Conditions # 3 & 4 require the Applicant to seek Department approval for any alterations beyond those repairs specifically described in the Application and authorized by the Certification and Agreement.
 - Condition # 7 provides that the Department may modify or revoke the Certification and Agreement if the project is not completed according to the terms and conditions of the certification or the Department determines the activity is detrimental to the public interest.
 - Condition # 9 provides that accepting the Certification and Approval by beginning work on the project signifies that the Applicant read, understood and agreed to follow all of its terms and conditions.
 - Condition # 10 required the Applicant to submit photos of the work to DNR within a week of completion.
 - Condition # 12 required the Applicant to sign, notarize, and record with the Register of Deeds the boathouse repair agreement included in the certification approval by November 27, 2011 and to return a copy of the recorded document to the Water Management Specialist Scott Koehnke within 15 days of recording the document.
8. Nothing in the Application suggested to the Department that the Applicant intended to change its use of the Boathouse from navigationally related marine use to private commercial uses unrelated to navigation. Upon certification that the information contained in the Application is true and correct, the Applicant provided that "[t]he building is currently used for retail and will continue to be used as such."
9. The photos submitted in the Application illustrate that the Boathouse included a garage door for wet boathouse access, large signage providing "CHAIN O'LAKES MARINE", and large signs providing water safety rules and information regarding preventing invasive species.
10. As far as the Department was aware, the Boathouse was used as a marine facility since the prohibition of boathouses in 1979 and would remain in the same use

after the repairs authorized by the Certification and Agreement. The Application included a hand-written document that provided the name and address of the prior owner as follows: “prior owner (before Dec 2001), Mike Ellingson, Ellingson Marine...” The same document in the Application provides “to the best of my knowledge, the only repairs after 1979 have been paint and a few pilings.”

11. According to the Application, the Boathouse was built in 1920, prior to the prohibition of the construction or placement of boathouses beyond the ordinary high-water mark of any navigable waterway effective December 16, 1979. Wis. Stat. § 30.121(2).
12. Nothing in the Application alerted the Department to the Applicant’s plans to begin advertising and renting out the Boathouse for private events and parties.
13. Prior to the open-water season of 2012, the Department did not receive any complaints from the public or other evidence that would have supported a warrant for an on-site inspection of the Boathouse to determine whether it was being used for purposes inconsistent with and detrimental to the public interest in the navigable waters of Taylor Lake (Chain.)
14. During the 2012 open water season the Department began to receive public complaints from several property owners and local businesses that alleged that the Boathouse was being used for non-navigational uses. The complainants alleged that the Boathouse was being used as an event location for commercial, private rental use for parties and gatherings.
15. Upon investigation, the Department verified public allegations including that the Boathouse has been advertised and used as a private rental space for multiple uses that are non-navigational.
16. The current use of the “Boathouse” structure does not meet the definition of a boathouse as defined in Wis. Stat. § 30.01(1d) (“ ‘boathouse’ means a structure used for the storage of watercraft and associated materials which has one or more walls or sides”); *see also*, Wis. Admin. Code § NR 325.03(2); it should be considered a miscellaneous structure lacking authorization under Wis. Stat. § 30.12(3m). The current use of the Boathouse privatizes public resources for non-navigational uses in violation of chapter 30 and in violation of the public interest in navigable waters.
17. Wis. Stat. § 30.03(4)(a), provides that if the Department learns of a possible violation of the statutes relating to navigable waters or a possible infringement of the statutes relating to navigable waters, and the department determines that the public interest may not be adequately served by imposition of a penalty or forfeitures, the department may order a hearing concerning the possible violation or infringement and ask the hearing examiner to issue an order directing the

responsible parties to perform or refrain from performing acts in order to fully protect the interests of the public in the navigable waters.

18. Following certified mail notice from the Department, the Applicant met with Department staff on April 2, 2013. Department staff informed the Applicant that the event-rental of the Boathouse is considered a non-navigational use contrary to the public interest. The Applicant was asked to stop renting the structure out for weddings, meetings and similar uses.
19. During 2012 and 2013, the Department has exchanged correspondence with counsel for the Applicant and attempted to resolve this matter without a hearing. The Department disagrees fundamentally that the Applicant can continue these non-navigational activities during the open-water season and continue to have the authorization to repair the boathouse.
20. The Applicant's violation of ch. 30 constitutes a public and statutory nuisance pursuant to Wis. Stat. § 30.294 and Wis. Stat. § 30.12, respectively, which may be prohibited by injunction or abated by legal action; the Department seeks return to navigational use exclusively for the Boathouse. The rental of the Boathouse for anything non-navigational is to be ceased.

The WDNR is asking the Division of Hearings and Appeals to issue an order directing the Applicant, including all associated individuals corporate or private, or any combination of these parties to cease the use of the Boathouse for non-navigational uses such as rentals, parties, bands or similar non-navigational uses immediately upon issuance of the Order.

On July 2, 2014, the Department filed a Request for Hearing with the Division of Hearings and Appeals.

NOTICE is hereby given that the State of Wisconsin Division of Hearings and Appeals will hold a public hearing pursuant to Wis. Stat. §§30.12(1) and (3m), 30.121, 30.294 and 30.03(4)(a)., to determine whether the alleged actions by Padraic and Ann Marie Meighan and Clear Water Harbor, Inc. violates Wis. Stat. §§ 30.12, 30.121 and 30.294. The hearing may result in an order abating the maintenance of the boathouse for non-navigational uses and directing Mr. and Mrs. Meighan, Clear Water Harbor, Inc., Taylor Lake Boathouse, or any combination of these parties, to perform such acts as may be necessary to fully protect and effectuate the interests of the public in these navigable waters.

NOTICE is further given that the hearing will be held at **10:30 a.m. on August 28, 2014**, in the County Board Room (1st Floor) at the Waupaca County Courthouse, 811 Harding Street, Waupaca, Wisconsin.

NOTICE is further given State of Wisconsin Division of Hearings and Appeals will initiate a prehearing scheduling conference on the above matter at **10:00 a.m. on Tuesday, August 5, 2014**. To so participate, said persons must write to the Division of Hearings and Appeals, **at least three days prior to the August 5th telephone prehearing conference**, in care

of the undersigned and indicate a phone number where they can be reached at the above mentioned time.

The hearing is a Class 2 contested case pursuant to Wis. Stat. § 227.01(3)(b) and the fair play provisions of Wis. Stat. ch. 227 will apply. The procedures relating to contested cases set forth in Wis. Admin. Code ch. NR. 2 will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at a court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin on July 14, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Jeffrey D. Boldt
Administrative Law Judge